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In re Application of
Rollat

Application No. 10/693,966

Filed: October 28, 2003

Attorney Docket No. 5725.0756-01

For: RESHAPABLE HAIR STYLING
COMPOSITION COMPRISING ACRYLIC
COPOLYMERS

ON **OFFICE OF PETITIONS**
PETITION

This is a decision on the petition filed on March 9, 2004 and supplemented on April 30, 2004 to accord the above-identified application a filing date of October 28, 2003. The petition will be treated under 37 CFR 1.53(e) and 37 CFR 1.182.

On October 28, 2003, the application was deposited.

On March 1, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application stating that the specification, drawings, and an oath/declaration were missing and that a filing date would be accorded upon receipt of the missing items.

The present petition alleges that the specification and oath were filed on October 28, 2003. Petitioner requests an October 28, 2003 filing date for the application on the basis that a specification was received in the Patent and Trademark Office (PTO) on October 28, 2003.

In support, the petition is accompanied by a copy of applicant's postcard receipt showing an Office of Initial Patent Examination date stamp showing October 28, 2003 as the date of receipt. The postcard states a Continuing Application Under Section 1.53(b) was filed.

A properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503. As stated in MPEP 503, "[M]erely listing on the postcard... 'patent application' will not serve as a proper receipt for each of the required components of an application."

The itemized postcard in this case was not properly itemized. The initial reviewer compares/contrasts the application papers before him/her to the postcard receipt. The postcard receipt in this case did not specifically identify the contents of the October 28, 2003 filing. Therefore, the postcard receipt cannot be relied upon to show what specifically was received. The petition under 37 CFR 1.53(e) is **dismissed**.

Fortunately, there is another avenue for relief. Application Transmittal letter, which was received on October 28, 2003, incorporated by reference the entire disclosure of parent

application no. 09/695,392. The petition states that the specification and the oath/declaration in the parent application and instant continuation application identical.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that the specification and oath/declaration were present in the Office on October 28, 2003, albeit in the file of another application, i.e., application no. 09/695,392. Therefore, on petition under 37 CFR 1.182, the application may be accorded the requested filing date of October 28, 2003.

Regarding the lack of drawing figures, it is noted that the application contains composition claims. As stated in MPEP 601.01(f), it is the practice of the United States Patent and Trademark Office (PTO) to treat an application that contains at least one process, method, or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.) Therefore, the application may be accorded a filing date without drawings present.

In view of the above, the petition under 37 CFR 1.182 is **granted**. The copy of the specification submitted with the petition will be used for examination purposes.¹

The petition fee of \$130 will not be refunded since the petition was required to accord the application the requested filing date.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **October 28, 2003**, using the application papers filed on October 28, 2003 and the copy of the specification, claims, abstract, and oath/declaration filed on April 30, 2004.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ The Office assumes that the specification, and claims are a true and exact copy of the specification and claims submitted in the parent application. If this is not the case, then petitioner must notify the Office. Of course, the primary examiner is expected to compare the instant specification and claims to the disclosure of the parent application in order to verify that the specification and claims are, in fact, parts of the disclosure of the prior application.